IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/03/2003

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.6543 of 1997

S. Srinivasan .. Petitioner

-Vs-

1. The Additional Director
Export Inspection Agency-Chennai
213, Royapettah High Road
Royapettah, Chennai 600 014.

2. The Director (I and Q/C)
Export Inspection Council
(Ministry of Commerce, Govt. Of India
Pragati Towers, 11th Floor
26, Rajendra Place
New Delhi 110 008. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Mandamus as stated therein.

For Petitioner : Mr.V. Manohar

For Respondents : Mr.K. Veeraraghavan, ACGSC

:O R D E R

The petitioner is admittedly appointed temporarily as casual labourer in the second respondent Council, which is purely an autonomous body. Contending that the service of the petitioner as casual labourer has to be regularised under the Casual Labourers (grant of temporary status and regularisation of service) Scheme evolved by the Ministry of Law, Finance and Personnel Administration , the petitioner seeks a writ of Mandamus to direct the respondents to regularise his service from March 1991 and to pay the wages, allowances and attendant benefits on par with the regular permanent employees doing identical work.

2. The learned counsel for the petitioner contends that the rights of the petitioner conferred under Articles 14, 16, 21 and 23(1) of the Constitution of India would be violated, if the service of the petitioner is not regularised. In this regard, he relies upon the decision of this Court

dated 4.4.1997 in W.P.No.16080 of 1994, wherein E. Padmanabhan, J, following the order of a Division Bench of this Court in W.A.No.1003 of 1990, directed the respondents to regularise the service of the petitioners therein.

3. Opposing the above contentions and placing reliance on the averments stated in the counter affidavit filed on behalf of the respondents, learned Additional Central Government Standing counsel appearing for the respondents submits that the Casual Labourers (grant of temporary status and regularisation of service) Scheme is not applicable to the respondents, as the respondents are purely an autonomous body and that the respondents having identified the surplus manpower, formulated Voluntary Retirement Schemes, pursuant to which almost 800 employees retired voluntarily from the respondent organisation. In any event, the petitioner, being a temporary casual labourer, is not entitled to seek a writ of Mandamus as prayed for, as a matter of right.

4. I have given careful consideration to the submissions of both sides.

5. It is true that E. Padmanabhan, J, in an identical case, by order dated 4.4.1997 in W.P.No.16080 of 1994, directed the respondents to regularise the service of the petitioner therein, of course, following the order of a Division Bench of this Court in W.A.No.1003 of 199 0. But, it is trite law that it may not be proper for this Court to direct the employer to regularise the service of the temporary employees, particularly when the scheme under which temporary employees were appointed come to an end, activities of the employer is brought down and surplus manpower are identified by the employer, the voluntary retirement scheme is formulated, vide STATE OF H.P. v. ASHWANI KUMAR reported in AIR 1997 SC 352, HAFIQ AHMED & ANR. v. STATE OF RAJASTHAN & ORS. reported in 1999 (9) Supreme 221, and RAMAKRISHNA KAMAT & ORS. v. STATE OF KARNATAKA & ORS. reported in JT 2003 (2) SC 88. In the instant case, the respondents have taken a clear stand that they could not accommodate the petitioner in a regular post and they have identified the surplus manpower in their organisation and also formulated a voluntary retirement scheme to facilitate the permanent employees to avail such scheme.

6. That apart, the law as to the rights of the temporary employees seeking regularisation is now well settled by the Apex Court in STATE OF H.P. v. ASHWANI KUMAR reported in AIR 1997 SC 352, that the High Court was not right in giving direction to regularise the temporary employees who were engaged only for the project, which was completed and closed due to the non-availability of funds, and that the direction of the High Court to regularise such temporary employees by creating posts and continuing them in spite of non availability of funds and work is absolutely illegal.

7. Again, in HAFIQ AHMED & ANR. v. STATE OF RAJASTHAN & ORS. reported in 1999 (9) Supreme 221, the Apex Court has held that when the posts are created temporarily for fulfilling the needs of a particular project of scheme limited in its duration come to an end on account of the need for the project itself having come to an end either because the project was fulfilled or had to be abandoned wholly or partially for want of funds, the employer

cannot by a w rit of Mandamus be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose.

8. The Apex Court, in a recent decision RAMAKRISHNA KAMAT & ORS. v. STATE OF KARNATAKA & ORS. reported in JT 2003 (2) SC 88, reiterating the views taken in STATE OF H.P. v. ASHWANI KUMAR reported in AIR 199 7 SC 352, and HAFIQ AHMED & ANR. v. STATE OF RAJASTHAN & ORS. reported in 1999 (9) Supreme 221, held that it may not be proper to regularise the service of the temporary appointees.

9. Applying the ratio laid down by the Apex Court in the case of temporary employees, I am satisfied that the petitioner is not entitled to seek a writ of Mandamus to direct the respondents to regularise his service, as a matter of right, and therefore, the relief sought for by the petitioner cannot be granted, as such an exercise of power by this Court under Article 226 of the Constitution of India, is, time and again, deprecated by the Apex Court.

For all these reasons, the writ petition fails and the same is dismissed. No costs.

Index : Yes
Internet : Yes

To

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